



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

**In the Matter of the
Request for Opinion concerning
the conduct of DYLAN V. FREHNER
former Deputy District Attorney,
Lincoln County, State of Nevada.**

Request for Opinion No.: 07-48C

EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

The following is the Executive Director's recommendation based on the Investigator's report (TAB A).

Dylan V. Frehner (Frehner) is a former deputy district attorney of Lincoln County. He is currently the general counsel and general manager for the Lincoln County Water District (LCWD). Frehner allegedly used his position as deputy district attorney for personal enrichment when he sought and secured his current position with LCWD.

Frehner allegedly violated:

- NRS 281A.400.1 when he departed from the faithful and impartial discharge of his public duties as deputy district attorney by seeking and accepting his current position.
- NRS 281A.400.2 when he used his position as deputy district attorney to secure his current position.
- NRS 281A.400.3 when he participated in the negotiation of the contract for his current position while still acting as deputy district attorney.
- NRS 281A.400.5 by acquiring information through as deputy district attorney that is not available to the general public and using that information to secure his current position.
- NRS 281A.400.10 when he used his position as deputy district attorney to obtain an employment contract for his current position.
- NRS 281A.430.4 when he entered into a contract for his current position without open competitive bidding, without establishing that the number of other candidates for the position may be limited, and by taking part in developing the contract specifications.

Additionally, Frehner allegedly used his former position to obtain employment for a family member when he influenced the county to hire his father-in-law for the position of Lincoln County Administrator/Manager.

Frehner allegedly violated:

- NRS 281A.400.2 when he used his position as deputy district attorney to secure the position of county manager for his father-in-law.
- NRS 281A.400.5 by acquiring information as deputy district attorney that is not available to the general public and using that information to secure the position for his father-in-law.
- NRS 281A.420.4 when, while acting as deputy district attorney, he failed to disclose his relationship to his father-in-law during the county commission meeting at which the hiring of his father-in-law was approved.

A. JURISDICTION:

In his capacity as deputy district attorney for Lincoln County, Frehner was a public employee as defined by NRS 281A.150. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

A Waiver of Statutory Time Requirement was received from Frehner on December 7, 2007.

B. RELEVANT STATUTES AND OPINIONS:

NRS 281A.150 “Public employee” defined.¹

NRS 281A.400 General requirements; exceptions.²

NRS 281A.420 Additional standards: . . . disclosures required of public . . . employees . . .³

¹ “Public employee” means any person who performs public duties under the direction and control of a public officer for compensation paid by the State, a county or an incorporated city.

² A code of ethical standards is hereby established to govern the conduct of public . . . employees:

1. A public . . . employee shall not seek or accept any . . . employment . . . or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public . . . employee shall not use his position in government to secure or grant unwarranted privileges, preferences . . . or advantages for himself . . . or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281A.420.

(b) “Unwarranted” means without justification or adequate reason.

3. A public . . . employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.

5. If a public . . . employee acquires, through his public duties or relationships, any information which by law or practice is not at the time available to people generally, he shall not use the information to further the pecuniary interests of himself or any other person . . .

10. A public . . . employee shall not seek other employment or contracts through the use of his official position.

³ 4. A public . . . employee shall not approve, disapprove . . . or otherwise act upon any matter:

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others;

➔ without disclosing sufficient information concerning the . . . commitment or interest to inform the public of the potential effect of the action . . . upon the person to whom he has a commitment, or upon his interest. [S]uch a

RELEVANT STATUTES AND OPINIONS (CONTINUED)

NRS 281A.430 Contracts in which . . . employee has interest prohibited; exceptions.⁴

NCOE Opinion No. 03-03 (advisory; abstract)⁵

NCOE Opinion No. 01-05 (advisory)⁶

NCOE Opinion Nos. 06-20 and 06-21 (advisory)⁷

NCOE Opinion No. 06-57 (complaint)⁸

NCOE Opinion No. 00-54 (complaint)⁹

disclosure must be made at the time the matter is considered. If the . . . employee . . . holds an appointive office, he shall make the disclosure to the supervisory head of his organization . . .

8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

⁴ 4. A public . . . employee . . . may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

⁵ A Public Officer’s candidacy for the position of executive director of the State Commission while simultaneously serving as a member of the body that appoints the executive director (the State Commission) would not appear to violate NRS 281.236 or any other specific provision of NRS Chapter 281 under the specific facts herein. However, it may create the appearance of impropriety and put Public Officer’s public duties into conflict with his private interests. If Public Officer desires to submit himself as a candidate for the staff position of executive director of the State Commission, he must first resign his position as a member of State Commission.

⁶ To employ someone in public service as a public employee who brings the depth of background, experience, expertise, and interest as does [this public employee] could only further the public interest. The only other provision of NRS Chapter 281 which warrants review herein is NRS 281.481.10, which prohibits a public officer or employee from seeking other employment or contracts through the use of his official position. There is absolutely no evidence in the facts or circumstances of this matter or from the testimony presented to the Commission that suggests a violation of NRS 281.481. Therefore, should [this public employee] decide to accept the position of Division Administrator for the Division of Livestock Identification and Brands of the Department of Agriculture, his employment will not offend any provision of Nevada’s Ethics in Government Law as provided in NRS Chapter 281.

⁷ [The vendor] is allowed to bid on or enter into a contract with Nye County so long as [the vendor, who is a public employee] meets the four requirements enumerated in NRS 281A.430.4. Although NRS 281.230 does not fall within the jurisdiction of the Commission, it would be prudent for [the owner who is a public employee] to become familiar with its prohibitions, a violation of which could result in criminal prosecution.

⁸ [The public employee] entered into a contract between the Lincoln County Public Administrator’s office and herself, as owner of the [business] in which [the public employee] has a significant pecuniary interest. Under the facts and circumstances surrounding this contract, [the public employee] does not meet all of the four requirements enumerated in NRS 281A.430.4 for relief from the strict prohibition in NRS 281A.430.1.

⁹ [The public officer] did not violate NRS 281.481(1) because she did not have the power or authority to offer a county job to anyone or to promote any county employee. The commission found that the evidence demonstrated that [the public officer] merely attempted at the meeting to gather information and evidence relating to the alleged improprieties, consistent with her responsibilities in carrying out the faithful and impartial discharge of her public duties as a county commissioner.

C. SUMMARY OF RECOMMENDATION:

Issue of the employment contract with the LCWD:

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.1** when he allegedly departed from the faithful and impartial discharge of his public duties as deputy district attorney when he sought and accepted his current position.

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.2** when he allegedly used his position in government to secure or grant an unwarranted privilege for himself when he made the proposal to LCWD to cancel the contract with the District Attorney's office and hire him by contract to act as General Counsel and provisional General Manager for LCWD. LCWD was already recruiting for a manager.

Credible evidence **DOES EXIST** that Frehner violated **NRS 281A.400.3**, because he allegedly had a significant pecuniary interest in the contract between himself and the LCWD.

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.5**, because he did not have any more or any less information than the general public regarding the fact that the LCWD was interested in hiring a general manager and that LCWD needed legal services.

Credible evidence **DOES EXIST** to show that Frehner violated **NRS 281A.400.10** when he allegedly acted in his official capacity of deputy district attorney assigned to LCWD, while he was seeking the employment contract with LCWD.

Credible evidence **DOES NOT EXIST** that Frehner violated the provisions of **NRS 281A.430.4**, since contracts for professional services or from a sole source are exempt from open and competitive bidding pursuant to NRS 332.115¹⁰.

Issue of the contract to hire Frehner's father-in-law:

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.2** when he allegedly used his position as deputy district attorney to secure the position of county manger for his father-in-law, because there was no unwarranted benefit secured.

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.5** when he allegedly acquired information that was not available to the general public, because the information was discussed in various public meetings and the recruitment had been advertised.

¹⁰ **NRS 332.115 provides:**

1. Contracts which by their nature are not adapted to award by competitive bidding, including contracts for:
 - (a) Items which may only be contracted from a sole source;
 - (b) Professional services;
- are not subject to the requirements of this chapter for competitive bidding, as determined by the governing body or its authorized representative.

SUMMARY OF RECOMMENDATION (CONTINUED)

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.420.4** when he allegedly failed to disclose his relationship with his father-in-law at the county commission meeting at which his father-in-law was hired. Since Frehner is not a member of the County Commission, there is no requirement in NRS 281A for him to make such a disclosure in a public meeting. There is evidence to show that he made a disclosure of this conflict to his supervisor as required under NRS 281A.420.4.

D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):

On November 26, 2007, a Request for Opinion (complaint) was received from Lincoln County District Attorney Gregory J. Barlow (Barlow). The following is a summary of the allegations:

Frehner used his official position as a deputy district attorney to get, for his personal enrichment, employment with the LCWD. Frehner was employed as a deputy district attorney prior to Barlow's election as district attorney in November 2006. Barlow told Frehner he would be retained as a deputy.

Since January 17, 2006, the Lincoln County District Attorney provided counsel and legal services to the LCWD through an interlocal agreement. Frehner was the deputy providing such legal services pursuant to the agreement.

On December 4, 2006, Frehner presented to the water district a proposal to cancel the interlocal agreement for legal services with the district attorney's office and to have himself hired as legal counsel and as general manager for the water district. No resume of experience or qualifications is on file for Frehner that would support his employment in these positions. There was no public notice or recruitment for a contract paying in excess of \$80,000 per year salary plus benefits.

The water district board approved the hiring of Frehner as general counsel and provisional general manager while he was still employed as a deputy district attorney. The employment contract was given to Frehner to write up and was approved at the board's December 18, 2006 meeting.

Frehner used his official position as a deputy district attorney to obtain for his personal benefit and for the benefit of his father-in-law, the position of Lincoln County Administrator / Manager.

On November 9, 2006, Dylan Frehner was representing the district attorney at the regular meeting of the county commission. During the discussion of agenda item 23 regarding interviewing and possible hiring of a county administrator, Frehner was called into the meeting to report what the recruitment efforts had been. He reported verbally that the position was offered one time in an advertisement in the Lincoln County Record and was posted on an unknown web site. Of the two applicants at the time, only one was interviewed and that was Frehner's father-in-law. No disclosure of the relationship between Frehner and his father-in-law occurred. No question as to why Frehner was in charge of the recruitment for this position and why the only applicant considered was his father-in-law. The hiring

SUMMARY OF REQUEST FOR OPINION (COMPLAINT) (CONTINUED)

was approved and the contract was given to Frehner to complete for the next meeting.

On December 18, 2006, after accepting his position with the water district, Frehner appeared as deputy district attorney to advise the county commission that the statutory authority only allows the commission to hire a county manager and not an administrator.

A search of the files of the office of district attorney fails to find any record of Frehner's actions or any supporting facts regarding an "arms length" course of action by Frehner in this matter.

E. SUMMARY OF SUBJECT'S RESPONSE:

On December 28, 2007, Frehner submitted the Subject's Response to the complaint. On the issue regarding his employment contract, the following is a summary of his response:

In January 2006, Deputy District Attorney Frehner presented a contract to the LCWD to have the water district retain the district attorney's office as legal counsel. The contract was for no set term, with either party having the right to terminate the contract at any time upon reasonable notice. Under the contract, the water district paid the district attorney's office \$3000 per month, along with other consideration, to have Frehner act as their legal counsel. District Attorney Dunleavy used this money coming in from the water district to supplement the district attorney's budget and to raise Frehner's salary from \$50,000 per year to \$60,000 per year.

In November 2006, District Attorney Dunleavy lost his re-election campaign to Greg Barlow. After the election, Frehner met with Barlow and told Barlow that he would like to continue working in the district attorney's office. After Frehner met with Barlow, county commissioners expressed a concern to Frehner about the water district having a contract with the district attorney's office for legal services, if Barlow was the district attorney.

The individual commission members indicated a desire to retain Frehner as legal counsel independent from the district attorney's office. Uncertain whether Barlow would allow Frehner to conduct private practice as a deputy district attorney and continue working for the water district independently, Frehner made a proposal to the water district board at its December 4, 2006 meeting. The proposal was to create a full time position as the water district's general counsel and provisional general manager. Since Frehner had worked as the water district's general counsel for the past year, there was no request for a resume setting forth Frehner's qualifications and experience.

On December 4, 2006, the water district board approved terminating its contract with the district attorney's office and approved hiring Frehner, effective January 1,

SUMMARY OF SUBJECT'S RESPONSE (CONTINUED)

2007. District Attorney Phil Dunleavy was present at the meeting to provide the water district with legal advice so that Frehner would not be advising the water district board as to his own recommendation. The board and District Attorney Dunleavy reviewed the contract, and several changes were recommended to be brought back at the next meeting. Frehner revised the contract to reflect the suggested changes, and after review from the board and District Attorney Dunleavy, the contract was approved at the December 18, 2006 board meeting.

On the issue regarding his father-in-law's employment, the following is a summary Frehner's response:

On August 7, 2006, Frehner, acting as deputy district attorney of Lincoln County presented items #40 and #41 on the County Commission agenda for discussion. Item #40 dealt with the hiring of a chief administrative officer for the county and was presented by the District Attorney's Office. Many of the functions Frehner was performing for the commission were in an administrative capacity that were outside the scope of his job description as deputy district attorney.

Accordingly, he recommended that the Commissioners hire an administrative officer and advertise in as many venues as possible to obtain qualified candidates. Through previous discussions, the Commissioners were concerned about hiring a county manager due to a bad experience with the prior county manager. Thus the Commissioners preferred to title the position as the Chief Administrative Officer. The Commissioners approved creating the position in item #40 and further authorized advertising for the position in all avenues possible in item #41.

On August 21, 2006, Frehner was not present at the Commission meeting. Under item #9, District Attorney Phil Dunleavy advised the Commission that the cost to advertise for the chief administrative position in Clark County, Washoe County and other designated areas would be expensive. The Commission then approved looking into advertising on websites and in cheaper venues. The district attorney's office assisted the Commission by running advertisements in the local paper to advertise the position for chief administrative officer.

On October 7, 2006, the County Clerk reported to the Commission under item #10 that two applications had been received for the position of chief administrative officer. Although not in the minutes, Frehner disclosed to the commission at this meeting that one of the applicants, John W. Lovelady, was his father-in-law. The Commission appointed two of its members, Spencer Hafen and Hal Keaton, to interview the candidates and make recommendations.

On November 9, 2006, Frehner was present in the commission meeting representing the district attorney's office. When item #23 was heard, he instructed the Commission that the district attorney would be advising them due to his relationship with one of the applicants being considered. During the course of the discussion, the Commissioners asked him if he knew where the position had been advertised. Frehner stated that the advertisement occurred in the local paper and on

SUMMARY OF SUBJECT'S RESPONSE (CONTINUED)

a web site, but that he was not the one who posted the advertisements. The Commission continued to discuss why both candidates were not interviewed. Commissioner Hafen reported that he was unable to get in contact with one applicant. District Attorney Dunleavy advised the board that if they had a qualified applicant, there was no requirement that they needed to interview both applicants. Both Commissioners Keaton and Hafen reported excellent interviews with John Lovelady and recommended hiring him. All Commissioners voted in favor with minor changes to the proposed contract. At all times, the Commissioners were aware of Frehner's relationship to Mr. Lovelady.

At no time did Frehner review or make recommendations on John Lovelady's contract. Mr. Lovelady made the minor changes to his contract recommended by the commission and resubmitted it to the Commission himself. On November 23, 2006, the Commission approved the contract with John Lovelady.

On December 18, 2006, Frehner was still employed as the deputy district attorney. During the time between November 23 and December 18, he had reviewed the statutes authorizing the county to hire a county manager. After discussing these statutes with District Attorney Dunleavy, he agreed that there was no statute establishing the position of chief administrative officer, but only a statute creating a position of county manager. On December 18, 2006, Frehner advised the commission of what he had found and recommended that the title of county administrator be changed to county manager.

After an initial investigation, on February 27, 2008, a Notice of Additional Issues and Facts was sent to Frehner related to alleged violations of NRS 281A.430.4. The Notice requested a response to the following – when Frehner entered into his contract with the LCWD:

- Was the contracting process controlled by rules of open competitive bidding?
- Were the “sources of supply” limited?
- Did he take part in developing the contract plans or specifications?
- Was he personally involved in opening, considering or accepting offers?

March 4, 2008, a response to the Notice was received from Frehner:

There was no open competitive bidding. The water district terminated its contract with the district attorney's office and approved Frehner's proposal to transfer his employment from Lincoln County to the water district. There is no rule, statute, ordinance, policy, or other legal requirement for the water district to request competitive bids to hire an employee.

“Sources of supply” is not applicable to the instant matter of the hiring of a full-time employee.

Frehner presented a proposal to transfer his employment as a full time employee to the water district after the water district decided to terminate its contract with the district attorney's office. Upon acceptance of his proposal,

SUMMARY OF SUBJECT'S RESPONSE (CONTINUED)

Frehner drafted an employment contract at the request of the water district. They negotiated the terms, with Phil Dunleavy representing the legal interests of the water district. Frehner drafted and negotiated the terms of his employment contract with the water district.

No other offers were received for the hiring of this full time position.

F. INVESTIGATIVE ACTIVITIES:

The investigator:

- Received *Waiver of Statutory Time Requirement* form on December 7, 2007 **(TAB A)**.
- Reviewed Request for Opinion (complaint), including copies of the following **(TAB B)**:
 - Letter dated June 17, 2005 from then Lincoln County District Attorney Philip H. Dunleavy stating that Frehner would start working as a deputy district attorney.
 - Frehner's Oath of Office dated July 5, 2005.
 - Interlocal Contract Between Public Agencies of Lincoln County District Attorney's Office and LCWD dated January 17, 2006.
 - Agenda and Minutes for the Lincoln County Board of Commissioners meeting held on November 9, 2006.
 - Agenda and Minutes for the LCWD meeting held on December 4, 2006.
 - Agenda and Minutes for the LCWD meeting held on December 18, 2006.
 - Agenda and Minutes for the Lincoln County Board of Commissioners meeting held on December 18, 2006.
- Reviewed the Subject's Response, including copies of the following **(TAB C)**:
 - Excerpted Minutes for the Lincoln County Board of Commissioners meeting held on August 7, 2006.
 - Excerpted Minutes for the Lincoln County Board of Commissioners meeting held on August 21, 2006.
 - Excerpted Minutes for the Lincoln County Board of Commissioners meeting held on October 16, 2006.

The investigator researched the following:

- Agendas and Minutes of the Lincoln County Board of Commissioners meetings held in 2006 on August 7 and 21, October 16, November 9 and 20, and December 18 **(TAB D)**.
- Agendas and Minutes of the LCWD meetings held on May 1, 2006, December 4 and 18, 2006 and January 16, 2007 **(TAB E)**.
- Employment Contract for General Counsel/Provisional General Manager entered into between the LCWD Board and Frehner **(TAB F)**.
- *Notice of Additional Issues and Facts* related to NRS 281A.430.4 sent to Frehner February 27, 2008; response to Notice received March 4, 2008 **(TAB G)**.

INVESTIGATIVE ACTIVITIES (CONTINUED)

- Relevant Commission Opinions (TAB H).
- Excerpt from *2004-2005 Phone Directory for White Pine, Lincoln & Eureka Counties* (TAB I).

G. CONCLUSION AND RECOMMENDATION:

Issue of the employment contract with the LCWD:

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.1** by allegedly departing from the faithful and impartial discharge of his public duties as deputy district attorney when he sought and accepted his current position.

As opined in NCOE 00-54, the intent of this provision is to prohibit a public officer or employee from violating the public trust by taking official action in exchange for a personal benefit. In this case, there was no opportunity for quid pro quo since Frehner did not have any power to take any official action that would personally benefit himself or any of the members of the LCWD.

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.2** when he allegedly used his position in government to secure or grant an unwarranted privileges for himself when he made the proposal to LCWD to cancel the contract with the District Attorney's office and hire him by contract to act as General Counsel and provisional General Manager for LCWD. LCWD was already recruiting for a manager.

Frehner's proposal to the LCWD was not unwarranted. LCWD had been working toward recruiting for a general manager, having set aside funds to pay a manager for approximately one year. Additionally, LCWD had contracted to pay the District Attorney's office \$3,000 per month for part-time legal services. Frehner's proposal to combine the two positions and cancel the contract with the District Attorney was a warranted solution to LCWD's current situation.

Credible evidence **DOES EXIST** that Frehner violated **NRS 281A.400.3**, because he allegedly had a significant pecuniary interest in the contract between himself and the LCWD concerning the contract.

The evidence shows that he participated as an agent of government in negotiating the contract between himself and LCWD. The minutes of the December 18, 2006 meeting appear to show Frehner acting on his own behalf, but also providing legal advice to LCWD.

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.5**, because he did not have any more or any less information than the general public regarding the fact that the LCWD was interested in hiring a general manager and that they needed legal services.

CONCLUSION AND RECOMMENDATION (CONTINUED)

There are minutes of public meetings that indicate that this had been a topic of discussion by the board for some time. Additionally, there are minutes of public meetings that show that LCWD had entered into a contract with the District Attorney's office for legal services.

Credible evidence **DOES EXIST** to show that Frehner violated **NRS 281A.400.10** when he allegedly acted in his official capacity of deputy district attorney assigned to LCWD while he was seeking the employment contract with LCWD.

In the LCWD minutes of December 4, 2006 and December 18, 2006, Frehner is presenting information to his client regarding the termination of the contract with the District Attorney's office and the proposal for his own employment contract while at the same time providing legal advice to his client, LCWD. The December 18, 2006 minutes appear to indicate that Mr. Dunleavy was present during the agenda item that discusses these items and he too is providing legal advice to LCWD. Therefore, Frehner was not the sole provider of legal advice to the LCWD concerning these items.

Credible evidence **DOES NOT EXIST** that Frehner violated the provisions of **NRS 281A.430.4**, since contracts that are for professional services or sole source are exempt from open and competitive bidding pursuant to NRS 332.115.

There is no provision in the law that requires LCWD to use open and competitive bidding for employment contracts. There is provision a in NRS 332.115 that exempts the need for open and competitive bidding for professional services.

According to the White Pine, Lincoln & Eureka Counties 2004-2005 Phone Directory, there were only two private attorneys listed in the Lincoln County area. One had an office in Ely and Pioche and the other was the District Attorney elect. Therefore, the sources of supply for legal services did appear to be limited.

Frehner submitted a unique proposal that would solve a two-part situation for LCWD and he was uniquely qualified to fill. The fact that he was an attorney enabled him to provide a service to LCWD that they may not have been otherwise able to secure without contracting with the District Attorney's office. The fact that he had been working with LCWD for almost one year provided a unique qualification to act as the manager for LCWD as well as legal counsel. In this situation, since the sources of supply were limited, Frehner was making a sole source proposal to the LCWD in lieu of the LCWD developing plans and specifications.

There was no need for open and competitive bidding, pursuant to NRS 332.115. This proposal was a sole source proposal and so there were no other bids or proposals being considered. Frehner was not a member of LCWD so he was not involved in the decision to accept his own offer.

CONCLUSION AND RECOMMENDATION (CONTINUED)

Issue of the contract to hire Frehner's father-in-law:

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.2** when he allegedly used his position as deputy district attorney to secure the position of county manger for his father-in-law, because there was no unwarranted benefit secured.

The record reflects that there were two commissioners assigned to handle the consideration of the applicants and interview them. Those two commissioners determined that Mr. Lovelady was the most qualified candidate and it would be in the public interest to hire him for the position of General Manager. There was adequate reason for the County Commission to hire Mr. Lovelady.

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.400.5** when he allegedly acquired information that was not available to the general public, because the information was discussed in various public meetings and the recruitment had been advertised.

The position for County Manager had been discussed in public meetings of the County Commission and the County had an open recruitment that was advertised, which at least one other applicant in addition to Frehner's father-in-law.

Credible evidence **DOES NOT EXIST** that Frehner violated **NRS 281A.420.4** when he allegedly failed to disclose his relationship with his father-in-law at the county commission meeting at which his father-in-law was hired. Since Frehner is not a member of the County Commission, there is no requirement in NRS 281A for him to make such a disclosure in a public meeting.

Public officers and employees are required to disclose conflicts to the supervisory head of their organization when they are not a member of a public body. In this instance, the November 20, 2006 minutes of the County Commission reflect the fact that Frehner had disclosed his conflict to his supervisor, Phil Dunleavy.

REPORT PREPARED BY:

Matt C. DiOris DATED: 3/10/08
MATT C. DI ORIO, SENIOR INVESTIGATOR

Tami E. DeVries DATED: 3/10/08
TAMI E. DEVRIES, LEGAL RESEARCH ANALYST

APPROVAL AND RECOMMENDATION BY:

Patricia D. Cafferata DATED: March 10, 2008
PATRICIA D. CAFFERATA, ESQ.
EXECUTIVE DIRECTOR